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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,070	12/20/2001	Alan John Brasier	MUR-8582US	8608

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EXAMINER

EINSMANN, MARGARET V

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 04/08/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/019,070

Applicant(s)

BRASIER ET AL.

Examiner

Margaret Einsmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) ☐ Other: ____

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DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reincke, and/or Schmidt, US 3,551,087 in view of Turner et al, US 5,771,495 ; Carroll, US 3,847,543 and Horlacher et al, US 4,466,900 .

Reincke teach that wool/nylon blend material may be dyed and bleached in the same dyebath with a reductive bleaching agent, sodium dithionite, (which is disodium disulfite as claimed) combined with an optical brightening agent (which is a fluorescent dye). He also teaches that to achieve clear colors on wool, bleaching agents can be added to the dyebath to suppress the natural yellowness of wool, and to avoid the first-break effect on exposure to light. His reductive bleaching agents are mild and can be used in the dyebath with most acid reactive and wool-reactive dyes. See page 10-11. Reincke teaches dyeing wool/polyamide in section 9.3 on page 12

Schmidt teaches that wool may be simultaneously dyed and bleached with acid wool dyes. See abstract. See p 7. Applicant's claimed acid yellow is a known acid wool dye. It is also a fluorescent dye. Accordingly. Both Reincke and Schmidt teach dyeing and bleaching with a dye as claimed.

Turner (col 3 lines 18-22) and Carroll (example V bridging col 7-8) disclose textiles comprising 85%wool and 15% nylon. Carroll further teaches dyeing said textile in a jet dyeing machine.

Horlacher et al. discloses fluorescent dyes, anionic fluorescent brighteners, that may be used with wool, polyamide and felts. See col 13 lines 4-19. The nylon 6.6 claimed in claim 7 is a synthetic polyamide.

It would have been obvious to the skilled artisan to dye the blended wool/nylon product as disclosed by Turner or Carroll in a process of dyeing and bleaching as taught by either Reincke or Schmidt for the benefits that simultaneous dyeing and bleaching provides. Reincke teaches that reductive bleaching has an enhanced whitening effect especially when combined with optical brighteners. See page 4 second paragraph. Schmidt teaches that combined dyeing and bleaching with acid dyes provides a simple way of dyeing and bleaching in one operation. See col 1 line 49-51. It would have been obvious to further dye and bleach the claimed felt with the fluorescent whitening agent of Horlacher et al because those anionic whitening agents are used in an acidic environment to brighten wool and nylon.

Regarding the limitation of claim 19, acid dyes on wool/nylon are always dyed in an acidic environment, and applicant claims a mildly acidic environment which would not damage wool.

Regarding the limitation of claim 23, Reincke states that his reducing compositions bind iron and other heavy metals, thereby being a functional equivalent to the inorganic bleaching agent with chelating agent claimed in claim 23 absent evidence

to the contrary. Regarding the limitation of claim 16, Reincke claims that all washing agents improve the bleaching effect (page 4 first paragraph, and the claimed partitioning agent is an anionic washing agent. Regarding the limitation of claim 18, the liquor ratio claimed is conventional for jet dyeing. Regarding the limitation of claim 19, Reincke states that that is the conventional method before his improved method. Accordingly, though it is not a time saving measure, it is certainly not a novel alternative. Regarding the limitations of claim 27 and its dependent claims and claim 32 and its dependent claims, both Reincke and Schmidt claim superior brightness, though no measurements were performed. Reincke states that the combination of brighteners with reductive bleaching agents enhance the brightening effect. At page 4 second paragraph. Reincke teaches that wool may be bleached to "full whiteness" which essentially reads on the limitations of claims 32 and its dependent claims. Schmidt states that his bleaching and dyeing process with acid dyes produces dyeings that are "just as beautiful and bright as when the goods have been bleached prior to dyeing." Col 6 lines 37-39. Accordingly, bright dyeings with acid dyes on wool are taught.

Regarding claim 24, the subject matter would have been obvious to the skilled artisan because the patentability of a product by process claim does not depend on its method of production and where the examiner has found a similar product, the burden rests with the applicant to prove that that product is patentably distinct. See *In re Thorpe*, 227 USPQ 964 (CAFC 1985); *In re Marosi et al*, 218 USPQ 289; *In re Pilkington*, 162 USPQ 145. Regarding the limitations of claims 27+ and 32+, the prior art does not describe the products in terms of chroma, reflectance and lightness, and

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the patent office is not equipped with test equipment. Accordingly, the combination of prior art references above teaches how to form very bright, very white wool blend products. The burden is on applicant to prove that his product is superior to a wool blend product dyed and bleached by the processes of Reincke and/or Schmidt.

Claims 27, 28 and 29⁴⁷ and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art tennis balls "Milliken Standard Yellow Felt (std. F/Y) and "Milliken High Visibility Yellow Felt (Hi. Viz. F/Y)" as disclosed on page 21 of the specification. Both balls almost meet the limitations of claim 27. The std. F/Y meets the limitations of lightness and reflectance and is less than two units below the claimed chroma; the UHV F/Y meets the claimed limitations of chroma and reflectance of claim 27 as well as the limitations of chroma of claims 28 and 29 but is within 5.8% of the claimed lightness.

It would have been obvious to the skilled artisan that the claimed material and tennis balls are a variation of the disclosed balls because the values are so closely related as to be insignificant. Applicant has not states how his comparison was done. If only one ball from each category was compared, that is not a proper scientific comparison and the values are of no significance. Also, patentee has compared only one inventive ball comprising 60:40 wool:nylon and so the results cannot be extrapolated to include the range of products claimed.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 line 6 there is no antecedent basis for "said"

In claim 2 there is no antecedent basis for "dyestuff"; the basis in claim 1 is "dye"

Claim 3 is improperly dependent on claim 1. It needs to be dependent on claim 2 which claims a yellow dye.

In claim 16, the word "acid" should follow "dodecylbenzenesulfonic"

In claim 17 there is no antecedent basis for "treating." It should be changed to "dyeing".

In claim 19 there is no antecedent basis for the pH range.

In claim 22, there is no antecedent basis for "quasi-simultaneously."


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 703-308-3826. The examiner can normally be reached on 7:00 AM -4:30 PM M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 703-308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


Margaret Einsmann
Primary Examiner
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April 2, 2003